

USSN: 10/539,670
Attorney Docket: I-2002.025 US
Response to Office Action of March 21, 2007

REMARKS

Upon entry of the above amendments, claims 28-42 are pending in the application. Claims 1-27 are cancelled without prejudice thereto or disclaimer thereof any subject matter contained therein. Support for new claims 28-42 can be found, for example, in the claims as originally presented and throughout the specification. These new claims contain no new matter and their entry is respectfully requested.

I. Rejections Under 35 U.S.C. § 112, Second Paragraph

The rejection of claim 6 under 35 U.S.C. § 112, second paragraph for allegedly being indefinite was maintained. *See* Office Action, page 2. Solely to expedite prosecution and not in acquiescence to the rejection, Applicants have cancelled claim 6. It is thus believed that this rejection is now moot. Accordingly, Applicants request that the Examiner reconsider and withdraw this rejection.

II. Rejections Under 35 U.S.C. § 103

A. Claims 1-7, 14-16 and 23-27

Previously presented (and now cancelled) claims 1-7, 14-16 and 23-27 were rejected under 35 U.S.C. § 103(a) for allegedly being unpatentable over the combination of Poulet *et al.* (*Vet. Rec.* 148(22):691-695 (2001)), Mochizuki *et al.* (*J. Vet. Med. Sci.* 65(5): 573-575 (2001)), Miller *et al.* (U.S. Pat. No. 6,057,436), Schwartz *et al.* (*Virology* 32(2):219-223 (Oct. 2002)), and Pratelli *et al.* (*J. Vet. Med. B* 47:273-276 (2000)). Office Action, page 3. Applicants respectfully traverse this rejection to the extent that it applies to newly presented claims 28-42.

All currently pending claims include, among other limitations, a vaccine comprising an MVC antigen. Applicants respectfully stress to the Examiner that *none* of the references applied by the Examiner teach or suggest a vaccine comprising an MVC antigen. Indeed, Applicants were the first to make and describe such a vaccine, as evidenced by their patent application.

Applicants respectfully wish to impress upon the Examiner that recognition of the existence of a virus does not imply that a vaccine can necessarily be developed from that virus.

USSN: 10/539,670

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Human immunodeficiency virus and hepatitis C virus are well known examples of widely recognized viruses for which there exist no vaccines. The Examiner has not provided any evidence in support of the presumption that an MVC vaccine could be made from an MVC viral isolate. *Any such evidence would be at best speculative, as Applicants are the first to successfully make such a vaccine.* Given the unpredictability of the biotechnical field of the invention, successful formation of a vaccine cannot be presumed. Applicants' successful invention of an MVC vaccine could not be predicted from any of the publications cited by the Examiner.

Applicants also respectfully wish to impress upon the Examiner that CPV-1 is genetically and antigenically distinct from CPV-2. *See* page 219, left column of Schwartz *et al.* Indeed, "[a]ntigenic and genomic properties of MVC are distinct from those of canine parvovirus type 2 (CPV-2)." *See* page 365, left column of Pratelli *et al.*, *J. Vet. Diagn. Invest.* 11: 365-367 (1999), cited by the Examiner at the bottom of page 6 in the Office Action. Awareness of the distinction between CPV-1 (also known as MVC) and CPV-2 has led other scientists to state that "MVC . . . [is] a completely different parvovirus [from CPV-2]." First two sentences under "Classification and Epidemiology" of Truyen, U., *I.V.I.S.*, January 2000, cited by the Examiner at the top of page 7 in the Office Action. Moreover, bovine parvovirus appears to be the closest related virus to MVC, *but is only 43% identical at the DNA sequence level, with even less sequence homology at the protein level.* *See* Schwartz *et al.* at Abstract.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the § 103 rejection, not extend it to the currently pending new claims, and put the present application into a condition of allowance.

B. Claims 8-13 and 17-22

Claims 8-13 and 17-22 are rejected under 35 U.S.C. § 103(a) for allegedly being unpatentable over the combination of Poulet *et al.*, Mochizuki *et al.*, Schwartz *et al.*, and Pratelli *et al.*, as applied to claims 1-7, 14-16 and 23-27 above, and further in view of Willem *et al.* (*Rev. de Medecin Vet.* 152(5): 373-378 (2001)). Office Action, page 9. Applicants respectfully

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traverse the rejection for all of the reasons above, which are fully incorporated herein. Moreover, Applicants note that Willem *et al.* neither teaches or suggests MVC vaccines. However, solely to expedite prosecution and not in acquiescence to the rejection, Applicants have cancelled claims 8-13 and 17-22 without prejudice thereto or disclaimer thereof any subject matter contained therein.

Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection.

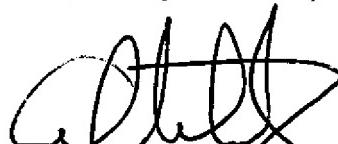
USSN: 10/539,670
Attorney Docket: I-2002.025 US
Response to Office Action of March 21, 2007

Conclusion

Applicants do not believe that any other fee is due in connection with this filing. If, however, Applicants do owe any such fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No. 02-2334. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. 02-2334.

Applicants submit that this application is in condition for allowance, and request that it be allowed. The Examiner is requested to call the Undersigned if any issues arise that can be addressed over the phone to expedite examination of this application.

Respectfully submitted,



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